

SECTION 15 - PAST SITE CONTAMINATION

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15 PAST SITE CONTAMINATION

Synopsis

Initial Implementation Requirements:

- C If a NWS facility or work site is notified that it is a Potentially Responsible Party (PRP) for the remediation of a contaminated site, contact the RECO and NWS legal counsel immediately. (15.5.1a)**
- C If attempting to acquire a piece of real estate, have a Phase I property investigation performed by a qualified contractor. (15.5.1b)**
 - S If contamination is found, perform a Phase II investigation or look for another site. (15.5.1b)**

Recurring and Annual Task Requirements:

- C Continued Monitoring of a Remediated Site.**

Checklist

I5 Past Site Contamination	YES	NO	N/A
1. Has the facility or work site been notified that it is a Potentially Responsible Party for contamination of property? <i>(15.5.1a)</i>	<input type="checkbox"/>	_____	_____
2. If the NWS is attempting to acquire real estate, has a Phase I property investigation been performed? <i>(15.5.1 b)</i>	_____	<input type="checkbox"/>	_____

15 PAST SITE CONTAMINATION

15.1 Purpose and Scope

This section is applicable to any NWS facility that is currently located on or attempting to acquire a site that was or may have been chemically contaminated by past activities and operations. The section applies to all NWS facilities and work sites.

15.2 Definitions

Due Diligence - the formal investigation of a piece of real estate to determine its environmental history and the potential for on-site contamination.

Responsible Party - any person, organization, agency or other legal entity which is found to be responsible for any contaminants located on a piece of property.

15.3 Acronyms Employed in This Section

ASC	-	Administrative Service Center
CERCLA	-	Comprehensive Environmental Response, Compensation and Liability Act
NOAA	-	National Oceanic & Atmospheric Administration
NWS	-	National Weather Service
NWSH	-	National Weather Service Headquarters
RECO	-	Regional Environmental Compliance Officer
PRP	-	Principal Responsible Party

15.4 Regulatory Requirements

15.4.1 Federal

Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or Superfund was created by Congress to address the environmental, social and financial problems created by previously contaminated real estate. While the law is best known for the creation of the Superfund - a pot of money to fund clean-ups where responsible parties can't be identified - it also established strict and lasting liability for anyone who improperly managed hazardous waste.

15.4.2 State

To address problems at contaminated sites that do not qualify for the Federal CERCLA program, several states have enacted similar legislation and regulatory

programs. NWS Focal Points must contact the Regional Environmental/Safety Coordinator to determine if the State has a similar program.

15.5 Requirements

CERCLA created two principals regarding property contaminated by improper waste disposal.

First, if a person, business or governmental agency caused a piece of real estate to become contaminated by what is deemed “improper disposal” of a waste, the person, business or governmental agency is responsible for remediating the site.

Secondly, if a person, business or governmental agency buys or acquires a piece of real estate that is contaminated by the improper disposal of a waste by another entity - and the buyer does not perform a “due diligence search” to determine if the property is contaminated and to what extent, the buyer is responsible for remediating any and all contamination discovered on the property at a later date.

15.5.1 Application to the NWS

For the NWS, these principles will apply to three activities: past disposal activities, acquiring real estate and transferring real estate.

a. Past Disposal Activities

If a NWS facility or work site sent waste for treatment, storage or disposal to a solid (or garbage) or hazardous waste facility or site that is now (or could be in the future) determined to be contaminated, the NWS could be identified as a “Responsible Party,” and because the EPA (or State) need only identify one responsible party, the NWS facility could be held legally responsible for conducting and paying for the entire cost of the clean-up - even if it only sent a very small amount of waste. The NWS would then be required to sue any other potentially responsible parties (PRPs) to recover any money it was forced to pay.

Normally, this does not happen. When a contaminated site is identified, usually a number of PRPs are identified, contacted and for a variety of reasons, the PRPs jointly become involved in determining the scope of the clean-up and their individual share in paying the cost. Because the potential liabilities are so high, should a NWS facility or workstation be notified by the EPA or State that it has been identified as a potentially responsible party, the Station Manager must immediately contact the NWS Regional Director and the NOAA Regional Environmental Compliance Officer (RECO) for assistance. Copies of all the NWS correspondence must be sent to legal counsel.

b. Acquisition of Property

Prior to a NWS facility or work site acquiring a piece of real estate, the environmental history of the property must be investigated to determine if site contamination is present. This investigation is termed a “due diligence” or “Phase I” investigation and it must be done in accordance with a protocol designed by the American Society for Testing and Materials (ASTM) entitled, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (ASTM 1527-00 dated Nov. 1, 2000). A Phase I Environmental Site Assessment includes four basic components: a records review, a site reconnaissance, interviews with current owners and occupants of the property and an evaluation and report of the findings. This investigation must be performed by a qualified environmental specialist or consultant and is arranged by the Administrative Service Center (ASC) as part of the acquisition process.

A Phase II Assessment is usually initiated when more detailed or specific information is required about the property under investigation. For example, if the property was previously used as a “junkyard,” an investigation into whether the soil and groundwater at the site were contaminated with oil, solvents or paints.

A Phase II can include soil and groundwater testing or even a search for underground tanks, drums or equipment using ground-penetrating radar or other investigative techniques.

If the Phase I study identifies a major environmental problem or problems with a site, the Regional Environmental Compliance Officer (RECO) should be contacted. The RECO, with NOAA General Counsel guidance, will recommend what course of action the NWS and ASC should take. Possible options would be to:

- (1) perform a Phase II Environmental Site Assessment to further characterize the site.
- (2) pursue an alternate site location.
- (3) pursue legal documentation which would indemnify NWS from past use site environmental liability.
- (4) accept the problem(s) and assume the environmental liability associated with the site.

One or more of these options should be pursued prior to NWS taking control of the site.

c. **Transferring Property**

When an NWS facility no longer needs a piece of real property, it will often transfer the property to another agency or governmental unit. When this occurs, NWS is required to meet the requirements of CERCLA 120, subpart (h), which requires Federal agencies to disclose all known environmental contamination prior to the sale or transfer of real property. The Regional Environmental Coordinator or NOAA RECO should be contacted to assist in determining whether the real property has the potential for environmental contamination and if necessary, to conduct an environmental survey to investigate if there is any contamination. The ASC will include a written disclosure of known environmental contamination in the real property sale or transfer deeds.

There are additional requirements when a property is sold to a non-Federal buyer. The NOAA RECO should be contacted to assist in this effort.

15.6 Responsibilities

15.6.1 NWS Headquarters (NWSH)

- a. The NWS Environmental/Safety Office shall perform an annual assessment of the NWSH facilities to ensure that the facilities are in compliance with this section.
- b. The NWSH Environmental/Safety Office shall periodically perform an assessment of the regional headquarters and field offices to ensure compliance with this section. The frequency of these regional and field office assessments shall be determined by the NWSH Environmental/Safety Office.
- c. Requests for clarification concerning this section shall be directed to the NWSH Environmental/Safety Office.

15.6.2 Regional or Operating Unit Environmental/Safety Coordinator

- a. Shall monitor and coordinate to promote compliance with the requirements of this procedure for the regional headquarters and field offices or operating units.
- b. Shall ensure that procedures are developed at regional headquarters or operating unit facilities to identify and report past site contamination.

- c. Shall perform an annual assessment of the regional headquarters facilities or operating unit to monitor and promote compliance with the requirements of this section.
- d. Shall perform assessments or designate personnel to perform assessments of all field offices to monitor and promote compliance with the requirements of the section every two years.

15.6.3 Station Manager

- a. Shall have oversight over the implementation of this section and ensure that the requirements of this section are followed by individuals at the NWS facility.
- b. Shall ensure that procedures are developed at NWS field offices for reporting chemical contamination discovered on-site.
- c. Shall ensure NWS employees follow the requirements of this section.
- d. Shall review or delegate review of this section on an annual basis to ensure that the facility is complying with its requirements. Confirmation of this review shall be forwarded to the Regional or Operating Unit Environmental/Safety Coordinator.

15.6.4 Environmental or Environmental/Safety Focal Point or Designated Person

- a. Shall ensure that any tasks assigned by the Station Manager are implemented in accordance with this section.

15.6.5 Employees

- a. Individual employees affected by this section are required to read, understand and comply with the requirements of this section.
- b. Report all violations of the requirements of this section to their supervisor or Safety Focal Point.

15.7 References

Incorporated References

The following list of references is incorporated as a whole or in part into this section. These references can provide additional explanation or guidance for the implementation of this section.

15.7.1 American Society for Testing and Materials (ASTM)

“Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” ASTM 1527-00, dated November 1, 2000.